EXHIBIT 12

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,	Case No. CV 10-03561 WHA
Plaintiff,	**ORACLE'S SUPPLEMENTAL RESPONSES TO GOOGLE'S SIXTH SET OF INTERROGATORIES**
v.	
GOOGLE INC.,	
Defendant.	Dept.: Courtroom 8, 19th Floor Judge: Honorable William H. Alsup

1   Pursuant to Rule 33 of the Federal Rules of Civil Procedure and the parties' stipulation,

2 Defendant Google Inc. ("Google"), through its attorneys, supplements its responses and

3 objections to Plaintiff's Interrogatories to Defendant Google Inc., Set Five ("Plaintiff's Fifth

4 Interrogatories"), served by Plaintiff Oracle America, Inc. ("Plaintiff" or "Oracle") on August 21,

5 2015 as follows.

GENERAL OBJECTIONS

7   1.   Google responds generally that its investigation of the facts relevant to this

8 litigation is ongoing. Google's responses herein are given without prejudice to Google's right to

9 amend or supplement in accordance with Rule 26(e) of the Federal Rules of Civil Procedure, the

10 Civil Local Rules, the Court's Case Management Orders, and any applicable Standing Orders.

11   2.   Google generally objects to Plaintiff's Fifth Interrogatories, and the "Definitions

12 and Instructions" related thereto, to the extent they are inconsistent with or impose obligations

13 beyond those required by the Federal Rules of Civil Procedure, the Civil Local Rules, the Case

14 Management Orders entered by the Court, and any applicable Standing Orders. In responding to

15 each Interrogatory, Google will respond as required under Rule 33 of the Federal Rules of Civil

16 Procedure.

17   3.   Google generally objects to Plaintiff's Fifth Interrogatories to the extent they

18 attempt to reopen discovery on issues, events, transactions, and/or occurrences that could have,

19 and should have been addressed, if at all, prior to the original trial.

20   4.   Google objects to the definition of the words "Google" "You" and "Your" in

21 paragraph 1 of the Definitions of the Interrogatories as overly broad, unduly burdensome, vague,

22 and ambiguous and because the definition seeks to expand the definition of "Google" to include

23 all "predecessors, affiliates, successors, subsidiaries, divisions or parts thereof, parent holding

24 companies, including without limitation, Alphabet, Inc., and all past or present directors, officers,

25 agents, representatives, employees, consultants, attorneys, and others acting on its behalf." Such

26 a definition of "Google" expands the definition beyond any reasonable or commonly accepted

27 meaning of the term. Further, Google generally objects to Oracle's definitions of "Google,"

28 "You," and "Your" as overbroad and vague to the extent the definitions purport to include

DEFENDANT GOOGLE INC.'S SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
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1   Alphabet, Inc., as Google's proposed reorganization has not yet been finalized.

2   5.   Google generally objects to Oracle's definition of "Android" as vague, ambiguous,

3   overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of

4   admissible evidence to the extent it includes "related public or proprietary source code,

5   executable code, and documentation." Android is an open source software project, and Google

6   distributes the source code for Android pursuant to a free and open source license that allows

7   third parties to make modifications to the Android source code that Google distributes.

8   Accordingly, Google objects to Oracle's definition of "Android" to the extent it purports to

9   include software created, modified, and/or distributed by third parties and not Google. Similarly,

10   Google objects to the term "GOOGLE ANDROID devices" as vague and ambiguous and further

11   objects to the term as overly broad, unduly burdensome, and not reasonably calculated to lead to

12   the discovery of admissible evidence to the extent it includes devices running Android software

13   that are manufactured and sold by third parties, including without limitation any original

14   equipment manufacturers, and not Google.

15   6.   Google generally objects to Oracle's definitions of "Version" and "Versions" as

16   vague, ambiguous, overly broad, unduly burdensome, and not reasonably calculated to lead to the

17   discovery of admissible evidence. Android is an open source software project, and Google

18   distributes the source code for Android pursuant to a free and open source license that allows

19   third parties to make modifications to the Android source code that Google distributes.

20   Accordingly, Google objects to Oracle's definition of "Version" to the extent it purports to

21   include software created, modified, and/or distributed by third parties and not Google.

22   7.   Google generally objects to Oracle's definition of "37 Java API Packages" as

23   vague, ambiguous, overly broad and not reasonably calculated to lead to the discovery of

24   admissible evidence.

25   8.   Google generally objects to Oracle's definition of "Declaring Code" as vague,

26   ambiguous, overly broad, unduly burdensome, and not reasonably calculated to lead to the

27   discovery of admissible evidence. Google further objects that the term "code," as used in the

28   definition, is vague and ambiguous, as it is unclear whether Oracle is referring to human-readable

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1   source code or something else. Google further objects to the definition of Declaring Code as

2   overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of

3   admissible evidence to the extent it purports to include anything other than the source code

4   declarations that comprise the structure, sequence, and organization for the 37 Java API Packages

5   that were the subject of the Question 1A on the Phase 1 Special Verdict Form in the prior trial in

6   this action.

7   9.   Google generally objects to Oracle's definition of "SSO" and "structure, sequence

8   and organization" as vague, ambiguous, overly broad, unduly burdensome, and not reasonably

9   calculated to lead to the discovery of admissible evidence to the extent it purports to include

10   anything other than the structure, sequence, and organization of the 37 Java API Packages that

11   were the subject of the Question 1A on the Phase 1 Special Verdict Form in the prior trial in this

12   action.

13   10.   Google generally objects to Oracle's definition of "Java Platform" as vague,

14   ambiguous and potentially overbroad. When used in Google's responses, the phrase "Java

15   Platform" shall have the meaning ascribed to that phrase in paragraph 9 of Oracle's Amended

16   Complaint, filed in this Action on October 27, 2010 (ECF No. 36), including without limitation

17   Java ME (Micro Edition), Java SE (Standard Edition), Java EE (Enterprise Edition), OpenJDK,

18   and all versions thereof.

19   11.   Google generally objects to Plaintiff's Fifth Interrogatories to the extent (a) they

20   are not reasonably calculated to lead to the discovery of admissible evidence that is relevant to

21   any claim or defense of any party; (b) they are unreasonably cumulative or duplicative; (c) they

22   seek information that is obtainable from some other source that is more convenient, less

23   burdensome, or less expensive; or (d) the burden or expense of the proposed discovery outweighs

24   any likely benefit.

25   12.   Google generally objects to Plaintiff's Fifth Interrogatories to the extent they seek

26   information, documents, and/or things protected from discovery by the attorney-client privilege,

27   the work product doctrine, the common-interest privilege, and/or any other applicable privilege,

28   immunity, or protection. Nothing contained in Google's responses is intended to be, or in any

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1   way shall be deemed, a waiver of any such applicable privilege or doctrine.

2   13.   Google generally objects to Plaintiff's Fifth Interrogatories to the extent they

3   request information, documents, and/or things not within the possession, custody, or control of

4   Google, that are as readily available to Plaintiff as to Google, or that are otherwise in the

5   possession of Plaintiff, on the grounds that such requests are unduly burdensome.

6   14.   Google further objects to what Oracle has labeled as Interrogatory Nos. 26, 27, 28,

7   29, 30, 31, 32, 34 and 35 as improperly compound and containing multiple distinct sub-parts.

8   15.   Google objects to each Interrogatory as premature to the extent it seeks expert

9   testimony. Google will disclose such information at the time and in the manner contemplated by

10   the Federal Rules of Civil Procedure, the Civil Local Rules, the Court's Case Management

11   Orders, and any applicable Standing Orders in this case. Google also reserves the right to amend

12   and incorporate expert opinion and testimony at the appropriate time.

13   16.   Google incorporates by reference these General Objections into the specific

14   objections and responses set forth below. While Google may repeat a General Objection for

15   emphasis or some other reason, the failure to specifically refer to any General Objection does not

16   constitute a waiver of any sort. Moreover, subject to the requirements of Rule 33 of the Federal

17   Rules, Google reserves the right to alter or amend its objections and responses set forth herein as

18   additional facts are ascertained and analyzed.

19   17.   Google remains willing to meet and confer with respect to any of its objections to

20   assist Plaintiff in clarifying or narrowing the scope of the requested discovery, and reserves the

21   right to move for a protective order if agreement cannot be reached.

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1 developers, and architects using Oracle products, including Java products. Oracle invests in the

2 "Java Magazine," which is published on a bi-monthly basis in digital and mobile formats. This

3 digital publication is a source of knowledge about Java technology (*see*

4 http://www.oracle.com/technetwork/java/javamagazine/index.html). Oracle has welcomed the

5 entire Java community to become involved in the editorial process and contribute to the

6 publication.

7   Moreover, Oracle has and continues to support other Java-related efforts, including the

8 Java User Groups and Java.net, a home for the Java community to collaborate on and develop

9 Java projects such as OpenJDK. Finally, Oracle has invested in campaigns around Java and

10 developer forums such as in the form of web casts and developer conferences such as the Java

11 One conference.

12 **INTERROGATORY NO. 23:**

13   State in detail the factual bases for your contention that Google's use of any aspect of the

14 APIs-at-Issue does not constitute a "fair use" under 17 U.S.C. § 107.

15 **INTERROGATORY RESPONSE NO. 24:**

16   Oracle objects to this interrogatory as improperly compound and containing multiple

17 distinct sub-parts. Oracle objects on the basis that Google bears the burden of proof of proving

18 "fair use" under 17 U.S.C. § 107, and that this interrogatory improperly attempts to shift the

19 burden of proof to Oracle. As Oracle's contentions are subject to ongoing discovery and expert

20 analysis, Oracle objects to this interrogatory as premature. Oracle has not yet completed its

21 investigation of the documents and facts relevant to the claims and defenses asserted in this

22 action, and has not received relevant documents and information from Google or third parties.

23 Accordingly, Oracle's response will be based on the information reasonably available to it at this

24 time and Oracle will supplement its response as appropriate under the Federal Rules of Civil

25 Procedure. Subject to these objections, Oracle responds as follows:

26   Google's use of Oracle's Java API Packages is not a fair use. Facts supporting this

27 conclusion were set out in the previous trial in this matter and Oracle hereby incorporates and

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1 refers Google to the previous trial and appellate record, including all admitted trial exhibits, all

2 testimony and all trial court and appellate pleadings and briefing on this issue; facts supporting

3 this contention also include:

4   •   Google's use of Oracle's Java API Packages in Android is wholly commercial.

5 Google concedes this. Google was desperate to extend its market dominance in search to mobile.

6 Google intended to make billions off of Android and decided to use Oracle's copyrighted works

7 to get to market as soon as possible.

8   •   Google's use of Oracle's Java API Packages in Android is not transformative.

9 Google copied the Oracle's Java declaring code and used it for the same purpose as in Java: to

10 call upon pre-written packages of software. Google similarly copied the structure, sequence and

11 organization of the Java API Packages into Android without alteration.

12   •   Oracle's copyrighted work is creative. Google's "Java guru" explained that

13 designing a package is "a noble and rewarding craft," where "creative[ity]" and "aesthetic[s]

14 matter." As the district court concluded, "of course" this was "creative."

15   •   Google copied at least 7,000 lines of declaring code from Oracle's Java API

16 Packages. These lines of declaring code represent a substantial portion of the declaring code

17 from those packages Google copied.

18   •   Furthermore, Google copied the only code with any relevance to programmers: the

19 declaring code. Google was not indiscriminate in its copying, it took "the good stuff from Java."

20   •   Google's use of Oracle's Java API Packages had a disastrous effect on the market

21 for the Java platform in the mobile and smartphone markets. Oracle was licensing Java in the

22 mobile and smartphone markets when Google released Android, containing Oracle's copyrighted

23 Java API Packages, free of charge. With Android, handset manufacturers, wireless carriers, and

24 software vendors had a Java-friendly programming environment without licensing fees.

25 Companies preferred not paying licensing fees that they would have had to pay had they licensed

26 Java from Oracle. In other words, it was "pretty hard to compete with free."

27   •   Android's lack of compatibility with Java also impacted the market for Java. By

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1   design, Android programs are not compatible with the Java platform. As developers started

2   developing for Android, it damaged the "write once, run anywhere" proposition that is central to

3   Java.

4   •   Google's Android platform, which it gives away free of charge, also impacted

5   other markets where Oracle historically licensed Java or potential markets for Java, including the

6   television, set top boxes, automobiles, household appliances, wearable devices, tablets, and media

7   players.

8   **FIRST SUPPLEMENTAL INTERROGATORY RESPONSE NO. 25:**

9   Oracle objects to this interrogatory as improperly compound and containing multiple

10   distinct sub-parts. Oracle objects on the basis that Google bears the burden of proof of proving

11   "fair use" under 17 U.S.C. § 107, and that this interrogatory improperly attempts to shift the

12   burden of proof to Oracle. As Oracle's contentions are subject to ongoing discovery and expert

13   analysis, Oracle objects to this interrogatory as premature. Oracle has not yet completed its

14   investigation of the documents and facts relevant to the claims and defenses asserted in this

15   action, and has not received relevant documents and information from Google or third parties.

16   Accordingly, Oracle's response will be based on the information reasonably available to it at this

17   time and Oracle will supplement its response as appropriate under the Federal Rules of Civil

18   Procedure. Subject to these objections, Oracle responds as follows:

19   Google's use of Oracle's Java API Packages is not a fair use. Facts supporting this

20   conclusion were set out in the previous trial in this matter and Oracle hereby incorporates and

21   refers Google to the previous trial and appellate record, including all trial exhibits, all testimony

22   and all trial court and appellate pleadings and briefing on this issue; facts supporting this

23   contention also include:

24   •   Google's use of Oracle's Java API Packages was in bad faith. Google understood

25   that it was required to take a license in order to use someone else's intellectual property for

26   commercial purposes but it simply refused to do so because it wanted control over the Java

27   platform as implemented in mobile devices. Google's desire for control was particularly ill-

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1   intended since that control was designed to cement and extend Google's dominant market

2   position in search engine services. Google's bad faith is further evidenced by the fact that it

3   never obtained an opinion of counsel suggesting that its use was fair, nor do any of its other

4   internal documents discussing its decision to use the Java platform in any way suggest that it ever

5   believed its use without license and payment was fair. Google has willfully infringed the

6   copyrights in suit, which protect the Java Platform source code and documentation, as well as the

7   sequence, structure, and organization of the Java API Packages at issue; the evidence of willful

8   infringement demonstrates bad faith. Oracle summarized its evidence that Google's infringement

9   was willful and in bad faith in its August 20, 2015 Opposition to Motion to Preclude Submission

10   of Willfulness to Jury (ECF Nos. 1299 through 1299-24), Oracle's September 1, 2015 Statement

11   Regarding Willfulness Per ECF No. 1297 (ECF No. 1306), and Appendix A to the Statement

12   Regarding Willfulness (ECF No. 1312). Oracle directs Google to those submissions.

13   •   Google has earned at least $31 billion dollars in revenue to date on Android

14   through its sales of Android devices, through its licensing revenues earned from Android

15   applications and digital content, and from search engine advertising on the Android platform.

16   Through all of that commercial activity, Android was dependent upon the Oracle Java API

17   Packages, and yet Google has not taken a license nor paid Oracle a single cent for its commercial

18   use. It is simply unfair for one party to exploit another's intellectual property with enormous

19   commercial benefit, not take a license for it, and not pay for it.

20   •   Google concedes its use of the Java API Packages is commercial. Google was

21   desperate to extend its market dominance in search to mobile. Google intended to make billions

22   off of Android and decided to use Oracle's copyrighted works to get to market as soon as possible

23   while it faced actual and potential competition from Microsoft, Yahoo!, Facebook, Apple and

24   others. Google's use has continued over time, even after the initiation of this lawsuit and after the

25   Federal Circuit's opinion, to selectively take and use more of Oracle's copyrighted material from

26   the Java API Packages and from newer versions of Java to improve Google's position with

27   developers and in the market, which is a further commercial use. Google's use of Oracle's Java

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1   API Packages was not for educational, teaching, research, scholarship, criticism, comment, or

2   news reporting purposes.

3   •   Google's use of Oracle's Java API Packages in Android is not transformative.

4   Google copied Oracle's Java declaring code and the structure, sequence and organization thereof

5   and used it for exactly the same purpose as in Java: to provide familiar means to developers of

6   calling upon pre-written packages of software. Indeed, Google's documents expressly indicate

7   that its purpose was to use code for developers that was "familiar" and "non-jolting." Google

8   used and uses the copyrighted works in Android to communicate and appeal to an audience of

9   developers, the same purpose that the copyrighted works have been used and are used in Java.

10   •   Oracle's copyrighted work is creative. Google's "Java guru" explained that

11   designing a package is "a noble and rewarding craft," where "creative[ity]" and "aesthetic[s]"

12   matter." As the courts previously concluded, "of course" this was "creative."

13   •   Google copied at least 7,000 lines of declaring code from Oracle's Java API

14   Packages. These lines of declaring code represent a substantial portion of the declaring code

15   from those packages Google copied. Google copied the structure, sequence and organization of

16   the Java API Packages. This structure, sequence and organization represents a substantial design

17   aspect of the packages Google copied.

18   •   Furthermore, Google copied the only code with any relevance to programmers: the

19   declaring code. Google was not indiscriminate in its copying, it took "the good stuff from Java."

20   Google took this good stuff because "the alternatives all sucked." Google copied the code that

21   Google determined would be appealing to the audience of developers. Google has continued to

22   selectively include even more material from the Java API Packages in its newer versions of

23   Android, and has included in Android even more material from newer versions of Java,

24   selectively taking the material that is most desirable to Google.

25   •   While the importance of Google's use of the Java API Packages is subject to

26   ongoing expert analysis and therefore a complete answer to this interrogatory is premature until

27   the service of expert reports, at present Oracle believes that the Java API Packages copied by

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1   Google are central to Android and that the Android platform is highly dependent upon them. At a

2   minimum, as Google concedes, Android "does not work" without the Java API Packages.

3   • Google's use of Oracle's Java API Packages had a disastrous effect on the market

4   for the Java platform in the mobile and smartphone markets. Android can be characterized as the

5   Java platform plus the Linux operating system. The vast majority of lines of code in Android is

6   not code created by Google. Other companies were working on creating similar software

7   combinations, and Oracle was licensing Java in the mobile and smartphone markets when Google

8   released Android, containing Oracle's copyrighted Java API Packages, free of charge. Without

9   Android, the obvious choice for market participants trying to compete with Apple to create a

10   next-generation software stack for mobile devices would have been the Java platform. With

11   Android, handset manufacturers, wireless carriers, and software vendors had a Java-friendly

12   programming environment without licensing fees. Companies preferred not paying licensing fees

13   that they would have had to pay had they licensed Java from Oracle. In other words, it was "hard

14   to compete with free."

15   • Android's lack of compatibility with Java also impacted the market for Java. By

16   design, Android programs are not compatible with the Java platform. As developers started

17   developing for Android, it damaged the "write once, run anywhere" proposition that is central to

18   Java.

19   • Google's Android platform, which it gives away free of charge, has also

20   negatively impacted other markets where Oracle historically licensed Java or potential markets

21   for Java, as well as existing and potential markets, including the television, set top boxes,

22   automobiles, household appliances, printers, wearable devices, tablets, web browsers, game

23   consoles, media players, tablets, infotainment units, point-of-sale terminals, kiosks, industrial

24   automation systems, kiosks, other embedded device contexts and in connected "Internet of

25   Things" devices.

26   **INTERROGATORY NO. 24:**

27   To the extent you contend that Google may not deduct any expense (or category of

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1   bringing the project under the auspices of Sun's and Oracle's approved OpenJDK licensing

2   structure, namely the GPLv.2 license that Google has refused to take.

3   Sun and Oracle engaged in repeated negotiations with Google, attempting to bring it into

4   compliance. But, Google refused to take a license from Sun or Oracle. Thus, Oracle filed the

5   present lawsuit against Google to enforce its copyrights against Google's unlicensed use of the

6   Java API Packages, and has actively maintained this lawsuit against Google to enforce its

7   copyrights since the case was filed. Oracle is unaware of any party other than Google that is

8   threatening Java compatibility, through widespread copyright infringement, and causing a

9   commercial threat to Oracle and causing injury to the Java ecosystem.

10   Oracle is undertaking a reasonable investigation that will enable it to respond to this

11   Interrogatory and will supplement its response after such reasonable investigation is complete.

12   Pursuant to Federal Rule of Civil Procedure 33(d), Oracle refers Google to the documents bates

13   labeled OAGOOGLE2000153977-157970, OAGOOGLE2000157971-166380.

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16   Dated: November 12, 2015   KAREN G. JOHNSON-MCKEWAN
                                                     ANNETTE L. HURST
17   GABRIEL M. RAMSEY
                                                     PETER A. BICKS
18   LISA T. SIMPSON
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                                                     By: /s/ Gabriel M. Ramsey
21   _____
                                                         GABRIEL M. RAMSEY
22   Attorneys for Plaintiff
                                                         ORACLE AMERICA, INC.
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                                                            ORACLE'S FIRST SUPPLEMENTAL RESP.
                                                            AND OBJ. TO GOOGLE'S SIXTH SET OF
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PROOF OF SERVICE

2   I am over the age of eighteen years and not a party to the within-entitled action. My

3   business address is Orrick, Herrington & Sutcliffe LLP, 777 South Figueroa St., Suite 3200, Los

4   Angeles, CA 90017. On November 12, 2015, I served the following document(s):

5   **ORACLE'S FIRST SUPPLEMENTAL RESPONSES AND**
          OBJECTIONS TO GOOGLE'S SIXTH SET OF
6   **INTERROGATORIES**

7   on the interested parties in this action by electronic service [Fed. Rule Civ. Proc. 5(b)] by

8   electronically mailing a true and correct copy, pursuant to Google's counsel's email dated August

9   24, 2015, to the following listserv:

10   DALVIK-KVN@kvn.com

11   I declare under penalty of perjury under the laws of the State of California and the United

12 States that the above is true and correct.

13   Executed on November 12, 2015 at Los Angeles, California

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15   _/s/_   _Alyssa M. Caridis_____
                                                     Alyssa M. Caridis

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